

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

GORDON SUTTON,

Plaintiff(s),

vs.

MICHAEL J. ASTRUE,
Commissioner of Social Security,
Defendant(s).

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Case No. 4:04CV01623-ERW

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiff's Counsel's Supplemental Brief in Support of his Request for Attorney's Fees [doc. #15].

I. BACKGROUND

On June 13, 2007, this Court ordered that Defendant pay \$2,312.50 in attorney's fees and \$198.85 in costs to Plaintiff. The Court further ordered that Plaintiff receive \$150.00 filing fee from the Judgment Fund. Lastly, the Court ordered that Plaintiff submit further briefing in support of its assertion that he is entitled to 25% of Plaintiff's back benefit award, Defendant was then given an opportunity to respond to Plaintiff's supplemental briefing. The parties have submitted the requested supplemental briefing and the Court will now address the issue.

II. DISCUSSION

Under the Equal Access to Justice Act ("EAJA"), a Social Security Disability claimant, who successfully appeals to the United States District Court, is entitled to attorney's fees and costs associated with that action. 28 U.S.C. § 2412. The Social Security Act ("SSA"), 42 U.S.C. § 406(b)(1) also provides for an award of attorney's fees. The SSA states "whenever a court

renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total past-due benefits to which the claimant is entitled by reason of such judgment” 42 U.S.C. § 406(b)(1). Public Law Number 99-80 specifically provides that an award may be made under both of these provisions, however, the claimant’s counsel must return the smaller amount to the claimant. Pub. L. No. 99-80, § 3 (Section 206(b) of the Social Security Act (42 U.S.C. 406(b)(1)) shall not prevent an award of fees and other expenses under section 2412(d) of title 28, United States Code . . . [W]here the claimant’s attorney receives fees for the same work under both section 206(b) of the Act and section 2412(d) of title 28, United States Code, the claimant’s attorney [shall] refund to the claimant the amount of the smaller fee.”).

Plaintiff argues that pursuant to the SSA, Plaintiff’s counsel is entitled to twenty-five percent of Plaintiff’s back benefits. Plaintiff was awarded \$13,297.00 in back benefits. Plaintiff argues that this is Plaintiff’s portion, Defendant argues that this is the full amount.¹ Twenty-five percent of \$13,297.00 is \$3,324.25, which both parties agree is reasonable. Therefore Plaintiff’s counsel is entitled to the \$3,324.25 in attorney’s fees. The \$2,312.50 which was awarded in this Court’s prior order shall be returned to the Plaintiff in accordance with Public law Number 99-80, § 3. Therefore, Plaintiff’s Counsel shall return the previous award of \$2,312.50 to the Plaintiff. The costs and filing fee that was previously awarded are undisturbed by this order.

Accordingly,

¹Plaintiff states that he is requesting \$4,437.33 which represents the 25%. Defendant states that 25% of the back benefits is \$3,324.55. The Court notes that 25% of \$13,297.00 is \$3,324.25.

IT IS HEREBY ORDERED that Defendant shall pay \$3,324.25 in attorney's fees to Plaintiff's Counsel.

IT IS FURTHER ORDERED that Plaintiff's Counsel shall return the \$2,312.50 to the Plaintiff.

Dated this 2nd Day of August, 2007.

A handwritten signature in black ink, appearing to read "E. Richard Webber", is written over a horizontal line.

E. RICHARD WEBBER
UNITED STATES DISTRICT JUDGE